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No. A-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WALTER KUCHTA and LILLIAN KUCHTA,
& UNITED STATES GOVERNMENT, et al.,

Petitioners,

vs.

ALLSTATE INSURANCE COMPANY &
FIRM OF McDERMOTT & McGEE, &
STATE OF NEW JERSEY, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

REVEREND WALTER KUCHTA,
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QUESTION PRESENTED FOR REVIEW

1. Fraud in the State Courts Rule 4;5-8. Fraud in the Federal Courts Rule 9-B. Because of Fraud in the Courts by Firm of McDermott and Allstate Insurance Company I did not receive full rights to appellate review.

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STATE OF NEW JERSEY, et al.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit Court

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Because of fraud in the courts by the respondents under Statute rule 9-B Federal Rule and statute rule 4-5-8A of the State of New Jersey.

OPINION BELOW

The Court of Appeals entered its memorandum decision dated May 10, 1982 and June 7, 1982 not in open court. Page 15.

The court denied petitioner for rehearing and did not hear petitioner's motion of June 12, 1982 and the respondents did not file any papers on petition for rehearing and the petitioner did file. Page 20.

JURISDICTION

On June 7, and on May 10, 1982 The Court of Appeals entered judgment, because of fraud upon the court and the petitioner, under statute rule 9-B federal rule and statute of New Jersey rule 4-5-8-A jurisdiction on writ of certiorari.

> **SUPREME COURT STATUTE RULE 17**
> (A) (or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision).

Because of fraud upon the court and petitioner, was denied a hearing in open court motion of June 12, 1982 was not heard. The respondent did not file any papers for the rehearing of the petitioner's page 20 in the motion not heard in court.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

Because of statute of frauds Rule 9-B pleading special matters and State of New Jersey statute Rule 4;5-8-A

pleading special matters Rule 9-B fraud, mistake, condition of the mind. In all averments of fraud or mistake, shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

Because of fraud nor shall any person be deprived of life, liberty, or property, without due process of law.

This is on page 21A and 21B shows the law.

Because of statute of fraud 9-B I was deprived my federal civil rights. The Federal Civil Rights Act, 42 U.S.C. § 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accused by constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." This is on page 27 and this fraud was done to the courts and petitioner. I was denied a fair hearing in open court. Denied to hear motion of June 12, 1982 and McDermott and Allstate did not file any papers for rehearing, or June 12, 1982 motion.

STATEMENT OF THE CASE

Walter Kuchta, his wife, and his daughter instituted suit against James Rice and Antoinette Rice in New Jersey Superior Court, Law Division, Somerset County Venue, Docket No.: L-14202-58, on an automobile accident, which occurred on Route #22, in Bound Brook, New Jersey on September 8, 1958. Consolidated with that case was a Morris County district court action brought by Walter Kuchta, Lillian Kuchta his wife, and infant daughter, against Senator Lynch, who was attorney for Allstate Insurance Co. and the Rices.

Kuchta v. Rice, came on for trial before the late Hon. J. Berkeley Lahey, and a jury, on December 4, 5, 6 and 7, 1961. A verdict of $7,500 was returned by the jury in favor of Walter Kuchta; infant Sandra Kuchta $500.00, and $300.00 for wife Lillian Kuchta. The Kuchta's got a low verdict because of the attorney stating that they were dumb, stupid, and dumb farmers, while the jury was still present. The plaintiff's lawyer took us into a jail cell, and told us we better accept the money. The sheriff of Somerset County was there with the lawyer. Then there was the motion for new trial, Judge Lahey and Senator Lynch attorney for Allstate awarded $120.00 medical to Walter Kuchta for infant Sandra and wife Lillian Kuchta which was never paid.

Kuchta got a transcript that was not the correct transcript of the trial and motion for new trial. Appeal was taken to the appellate division on June 24, 1965 granting a new trial. Judge Kingfield assigned Judge Gebhardt to hear the trial on this matter. Then a motion was served on January 19, 1966, by Alfred A. Greenberg, who broke into the Kuchta house. He hurt my infant daughter with breaking the window in the door. and reached in and opened the door, When he came in he put a pistol to Walter Kuchta's head and served the papers which were to dismiss the appellate mandate for a trial on this motion. The papers were sent by McDermott's firm to dismiss the trial which appellate court awarded Kuchta.

Kuchta proceeded with a malpractice suit against Myron Levy because of saying that the Kuchta's were stupid people, dumb farmers while the jury was still present and carrying on before the jury against the Kuchtas. He did not handle himself properly. The case was handled by Alastar J. Sellar, a member of the firm of Gleason, Hansen & Pantages.

The Kuchta and Rice case was settled. Papers were signed. Kuchta's did not receive the checks. Kuchta went

to Sellar's office and the checks were not there. Kuchta told him about the medical award, but this was not in the signing of the awards and Allstate refused to pay this award. To this day Allstate refuses to pay this award to Walter Kuchta.

A warrant of satisfaction was filed into state court saying Liilian Kuchta was paid her $300.00 and infant Sandra Kuchta was paid her $500.00. This warrant of satisfaction was sent to Trenton on January 22, 1968 and in the warrant of satisfaction was about $120.00 medical award to Walter Kuchta which was not paid to him. This warrant of satisfaction was never told to the Kuchta family, that it was filed. Lillian Kuchta sent a letter to McDermott asking for her money and was refused. No money was sent to Lillian Kuchta or infant daughter Sandra Kuchta. McDermott stated in federal district court in Newark that the state has the money. But the state has no money for Lillian Kuchta and infant daughter Sandra Kuchta. Court order filed by McDermott, signed by Honorable James H. Coleman, indicates only Walter Kuchta's name and not his wife's or daughter's. No mention is made of Judge Leahy's medical award.

The warrant of satisfaction filed on January 22, 1968 states that Lillian Kuchta was paid $300.00 and infant daughter was paid $500.00. This was never paid. No checks were sent out to Lillian Kuchta and infant daughter Sandra Kuchta.

March 17, 1970 letter of District Claim Manager Charles C. Haus, states that checks were *cancelled and never cashed*. Also letter of March 5, 1970, by Charles C. Haus that the checks were *cancelled and never cashed*. Letter of December 7, 1972 states none of the checks have been cashed. Letter from McDermott's firm of August 14, 1973, signed by John Gaffey, states under oath that no checks were cashed. No checks have been sent to

Lillian Kuchta or infant daughter Sandra Kuchta. The warrant of satisfaction of January 22, 1968 states that Lillian Kuchta was paid and infant daughter Sandra was paid. This is fraud, no one was paid. McDermott stated, in the federal court transcript, that the State of New Jersey has the money, but the State does not have the money for Lillian Kuchta and daughter Sandra. The awards were not put into the State of New Jersey. Judge Coleman's order shows this. McDermott's firm put the wrong amount for Walter Kuchta. The medical award from the motion for a new trial is missing or stolen. Lillian Kuchta's jury award and infant daughter Sandra Kuchta's jury award are stolen. This is fraud.

This is fraud upon the courts, knowing that the Kuchta's were not paid. McDermott and Allstate Insurance Co. were granted the money from the appeals court mandate of $5,418.00. McDermott's firm filing the warrant of satisfaction, that they were paid, and stating in federal court the State of New Jersey has the money for Lillian Kuchta and infant daughter Sandra Kuchta. There is no money for them. No checks were ever given to Lillian Kuchta or infant daughter Sandra Kuchta, or sent to them. Kuchta's suit was put in after Judge Coleman's order was found out. Lillian Kuchta over the years was dying of cancer. She was unable to walk and was bedridden. She said to file suit, to get her money of the jury award and jury award of her child Sandra Kuchta. Lillian Kuchta passed away from cancer. She could not walk and get around. She has passed away to God's other world, but before she passed away she stated because of the wrongs done by the firm of McDermott, Walter Kuchta was to get her money and infant daughter's money for her. Lillian Kuchta gave Walter Kuchta under oath "power of attorney" to get the awards granted her and her daughter by the jury.

On September 17, 1982, Walter Kuchta appeared before the Honorable Halberstadter, J.S.C. in the Union County Court House. At that time, the respondents McDermott and McGee, withdrew their motion directing the Clerk of the Court to pay to their client Allstate $5,418.00 at the time, the petitioner's notice of motion for a stay was never heard. The petitioner was advised by the Clerk that a date would be determined for rehearing this matter. (As of this time, petitioner has not received notice of a new hearing date of this stay of $5,418.00.) and all the proof of the fraud in the motion for stay.

This same matter has appeared before the Honorable Vincent Buinno, J.D.C., at that time on September 25, 1982. Judge Buinno determined that the decision of the United States Court of Appeals for the Third Circuit would overrule any decision of the U.S. District Court for the District of New Jersey.

On June 14, 1982, a motion was filed by petitioner for a rehearing, which was never heard in Appeals Court.

On October 18, 1982, petitioner filed a notice of motion for a stay and to hear motion, and stating the fraud with proof.

The proof that the respondents, McDermott and McGee and Allstate Insurance Company committed fraud against the petitioner, and the courts, will be found in the warrant of satisfaction. McDermott's firm filed this warrant of satisfaction, and mandate of appeals court for $5,418.00 which McDermott said he will get from the clerk of the court. He should be stopped from all the wrong doings and is not entitled to any money from the Kuchtas.

REASON FOR GRANTING THE WRIT

Refer to statute rule 9-B fraud in the federal court and state court statute rule 4;5-8 fraud. This fraud was done to the courts and the petitioner without receiving his full rights to direct appellate review, due process demands that summary judgment be for the petitioners and their civil rights should not be denied a fair hearing.

N.J. The law's policy is to protect unwary and foolish, as well as vigilant, persons from evil doers' artifices, and negligence in trusting false representation will not excuse positive willful fraud therein.—*Peter W. Kero, Inc. v. Terminal Const. Corp.*, 78 A.2d 814, 6 N.J. 361.

N.J. Failure to discover an intended fraud before it has been perpetrated must necessarily exist in every case where the courts are appealed to to relieve the wronged party from its effect, and fact that exercise of a greater degree of prudence on the part of defrauded person would have prevented the fraud from being successfully carried through affords no ground for refusing relief—*Heake v. Atlantic Cas. Inc. Co.*, 105 A.2d 526, 15 N.J. 475.

N.J. Super. A.D. The law leans toward protecting even the foolishly credulous against the machinations of those who would defraud—*Schoharie County Co-op. Dairies v. Eisenstein*, 92 A.2d 390, 22 N.J. Super, 503.

Claus v. Brodhead, 116 A.2d 725, 36 N.J. Super, 598.

Both firms worked for Allstate Insurance Mead, Gleason, Hansen, & Pantages & Sellers & McDermott Firm, that is why the warrant of satisfaction was filed (page 4A). Allstate committed a fraud as no one was paid. Page 4A shows the government bill was never payed. Page 23 shows that payment was made to the government.

CONCLUSION

For the foregoing reasons of fraud upon the courts and the petitioner, and the denying of constitutional rights of due process v. of the constitution, and civil rights of the petitioners. The Federal Civil Rights Act 42 U.S.C. § 1983. The petitioner Rev. Walter Kuchta respectfully request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, and grant for the petitioner summary judgment for the full amount of the complaint.

Respectfully submitted,

/s/ Rev. Walter Kuchta (pro se)

REV. WALTER KUCHTA (pro se)
Box 101
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Dated: 15 October 1982